Keeler Brass Company, d/b/a Keeler Die Cast *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Cases 7–CA–39853, 7–CA–40212, 7–CA–40319, and 7–CA–40533

February 12, 1999

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On September 30, 1998, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief. The Charging Party filed an opposing brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Keeler Brass Company, d/b/a Keeler Die Cast, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We adopt the judge's finding that the Respondent unlawfully denied employees a 1997 annual wage increase. However, we do not rely on *Fieldcrest Cannon*, 318 NLRB 470 (1995), enf. denied in relevant part 97 F.3d 65 (4th Cir. 1996), which is distinguishable. In *Fieldcrest*, the Board found that the employer violated Sec. 8(a)(3) by discriminatorily withholding a 5.5-percent wage increase from unit employees. In bargaining for a contract, the union sought, but the employer did not offer, the 5.5-percent increase to the unit. The union then agreed to a 4.5-percent increase, but both union and employer agreed to reserve their rights to litigate their positions on the increase. The Board found that failure to offer the increase to unit employees was in bad faith and found that it violated Sec. 8(a)(5). The Board ordered a make-whole remedy for the 8(a)(3) violation. The Fourth Circuit denied enforcement as to the pay raise violations. In his concurring opinion, Judge Wilkinson emphasized that the parties reached agreement on a smaller increase for unit employees and that "the Board should have respected the outcome of the collective bargaining process." Id. at 97 F.3d at 78. In the instant case, as the Respondent has acknowledged in its exceptions and brief, the Respondent made its decision not to grant the 1997 annual increase without engaging in collective bargaining.

Members Brame and Hurtgen do not rely on Vice President Mitchell's May 1997 description of the Union as a "dark cloud on the horizon" to support a finding of antiunion animus.

In adopting the judge's unfair labor practice findings regarding the Respondent's failure to grant unit employees an annual wage increase, Member Brame also does not rely on the judge's analysis of the Respondent's budget process or on the fact that the Respondent granted a wage increase to its salaried employees. He further notes that no exceptions have been filed to the judge's finding that the Respondent violated Sec. 8(a)(5) by promulgating a new work rule on May 20, 1997.

Bradley Howell, Esq., for the General Counsel.
David E. Khorey, Esq., of Grand Rapids, Michigan, for the Respondent.
Michael L. Fayette, Esq., of Grand Rapids, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on April 30, 1998. The original charge in Case 7–CA–39853 was filed on May 23, 1997, and an amended charge in this case was filed on August 15, 1997. The charge in Case 7–CA–40212 was filed on September 15, 1997. The charge in Case 7–CA–40319 was filed on October 14, 1997, and the charge in Case 7–CA–40533 was filed on December 24, 1997.[1] Following the issuance of separate complaints, an order consolidating cases, second amended consolidated complaint and notice of hearing issued on January 28, 1998.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Keeler Brass Company, d/b/a Keeler Die Cast,[2] a corporation, engages in the manufacture and nonretail sale of die cast parts at its facility known as the Stevens Street facility located in Grand Rapids, Michigan. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues for Determination

The Respondent, Keeler Brass Company, operates a die casting plant at 236 Stevens Street in Grand Rapids, Michigan, under the assumed name of Keeler Die Cast. At all material times, the Respondent has also owned and operated two other plants in the Grand Rapids area—a plant located at 955 Godfrey Street, Grand Rapids (the Godfrey Street plant) and a plant located at 2929 32d Street, Kentwood, Michigan, under the assumed name of FKI Automotive (the Kentwood plant). On October 7, 1996, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the Union or UAW) filed a petition to represent the production and maintenance employees of the Respondent's Stevens Street plant. A stipulated election was conducted on December 12, 1996, in which a majority designated the Union as their collective-bargaining representative of a unit of production and maintenance employees. The Respondent filed objections to the election on December 19, 1996. After a hearing was conducted

[1] All dates are in 1997 unless otherwise indicated.

[2] At the hearing it was stipulated that the correct name of the Respondent is Keeler Brass Company, doing business as Keeler Die Cast.

on January 29 and 30, the hearing officer's report and recommendations to the Board was issued on May 14, in which the hearing officer overruled the objections to the election and recommended that a certification of representative issue. On September 3, the Board issued its Decision and Certification of Representative in which it adopted the findings and recommendation of the hearing officer and certified the Union as the exclusive bargaining representative in the following unit:

> All full-time and regular part-time production and maintenance employees including all leadmen, quality auditors and material handling clerks employed by the Employer at its facility located at 236 Stevens Street, SW, Grand Rapids, Michigan; but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees, guards and supervisors as defined in the Act.

Thereafter, the Respondent sought to "test the certification" by refusing to meet and bargain with the Union. The Board in *Keeler Die Cast,* 325 NLRB 496 (1998) granted a Motion for Summary Judgment, and ruled that the Respondent did not raise any issues which could not have been raised in the representation case, and concluded that the Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to meet and bargain with the Charging Party Union. At the time of hearing in the instant proceeding, counsel for the Respondent indicated that he had filed notice of appeal with the Sixth Circuit Court of Appeals. In the instant proceeding, the Respondent raised, but did not brief, as defenses to the complaint allegations, the assertions made in the cited proceeding. Until the circuit court rules on the appeal, the Board's previous decision is the law of this case and these defenses will not be discussed further.

The complaint alleges that since December 12, 1996, the date of the election, the Respondent, without giving the Union notice and opportunity to bargain, has made unilateral changes in terms and conditions of employment by withholding pension benefits improvements, by imposing new work rules, by withholding annual wage increases, by eliminating employer paid flu shots, by changing health and dental coverage, and by changing vacation benefits and work schedules. The General Counsel contends that the purpose for unilaterally withholding the wage increases, the pension improvements, and eliminating the employer paid flu shots was to demonstrate to the employees that the Respondent would refuse to meet and bargain with the Union, and that in the meantime the employees at the Stevens Street plant could expect to have lesser wages and benefits than they otherwise would have received had they not voted for union representation. The imposition of the new work rule is alleged to have been in retaliation for employees' support of the Union. Finally, the Respondent is alleged to have failed to timely provide information which the Union requested concerning bargaining unit employees and further, has failed and refused to supply certain information requested by the Union. This record reveals that before the election, the Respondent on several occasions noted to employees at the Stevens Street plant that certain benefits which were common at all three Keeler Brass area plants were to be given to the employees at the other two plants, but not to the Stevens Street employees because of the pendency of the election. Following the election, the Respondent has refused to meet and bargain with the Union and has unilaterally implemented whatever changes in existing policy and practice it desires at the Stevens Street plant. It has demonstrated animus against the Union, and a flagrant disregard for the labor laws of this country. Having reviewed the evidence and the briefs, I believe the General Counsel has correctly set out the facts and law which govern the decision of this case on brief and in the main I have adopted his brief.

B. Discussion of the Specific Complaint Allegations

1. Alleged failure to implement the pension improvements at the Stevens Street plant

For many years the employees of the three plants of the Keeler Brass Company were covered by the same pension plan. The employees at all three plants were provided the same levels of benefits and were subject to identical rules. Employees who transferred from one plant to another were given credit under this pension plan for their years of service at each of the plants. Because a large number of the employees in the proposed unit were approaching retirement age, one of the main issues in the election campaign was the adequacy of the Respondent's pension plan. The Respondent recognized that the adequacy of its pension was the key issue in the union drive, and in its campaign the Respondent advised Stevens Street plant employees that they had the same pension as the other local plants. Also, on the eve of the election, the Respondent reminded them of the peril of selecting the Union, by announcing that pension improvements in the pension plan would be implemented at the nonunion Godfrey Street and Kentwood plants on January 1, 1997, but not at the Stevens Street plant.

Thereafter, when the Union prevailed in the election, the Respondent, for the first time, implemented benefit improvements in the pension plan at the Kentwood and Godfrey Street plants without also implementing them at the Stevens Street plant. Furthermore, even though the Union advised the Respondent that it had no objection to implementing these improvements at the Stevens Street plant, it did not do so. Instead, the Respondent placed the onus on the Union for not implementing the improvements by asserting that the Union would assert that the improvements were a bribe to employees to abandon support for the Union.

At the time the union campaign started in September 1996, Jeff Mitchell, then the vice president and general manager of Keeler Die Cast, started to hold meetings with small groups of employees. At these meetings, which were called "*Coffee with Jeff*," Mitchell would talk to employees and answer their questions on various issues. Minutes from these meetings were then posted by the Respondent on bulletin boards in the plant. At the October 30, 1996, *Coffee with Jeff* meeting, the first such meeting held after the representation petition was filed, Mitchell told the employees,

> [t]he Union election is a serious matter. The outcome can affect us forever . . . . Some want the Union in for a different pension plan. There may be better plans around but we have all seen much worse pension plans as well. Some automotive plants have more. If we are forced into better benefits and wages, we won't make the money that we make now. KDC, KB, FKI and other FKI companies all have the same pension plan. Union issues will never be black and white. When you have a policy you want changed and the union is voted in, they can't guarantee you'll get what you want. If the Union comes to KDC we would all start from scratch with no benefits and we would re-negotiate everything. You may or may not get more money or a better pension plan, etc. It is not a sure thing.

The minutes for the December 6, 1996 *Coffee with Jeff* meeting indicate that an employee asked, "Why do we have such a strong union drive now?" Mitchell responded, "I can only guess. Maybe it is a desire for a different pension plan."

On that same day, December 6, Mitchell issued a memorandum to the Stevens Street plant employees advising them of the election on December 12 and encouraging everyone to vote. The memo went on to say:

> We have been up front with everyone in this process. We have had a number of questions about bonus and our pension plan. As you know, as much as we might want to make changes now, there are rules governing the election period that affect our being able to do that. I can tell you that there are pension improvements currently being finalized at Godfrey and Kentwood and anticipate that a decision will be announced there shortly.

Mitchell, who was called as an adverse witness, admitted that he was advised by the corporate office that the Stevens Street plant would not be getting the pension improvements that were being implemented at the Godfrey Street and Kentwood plants because "we were in the middle of a union drive or a union election."

Then shortly before the election on December 10, 1996, copies of a memorandum dated December 9 from Dan Robusto, then president of FKI Automotive,[3] addressed to the employees at the Kentwood plant, appeared in the breakroom at the Stevens Street plant and were posted on that plant's bulletin boards. The memorandum described the improvement in the way normal and early retirement benefits were calculated effective January 1, 1997, for the Kentwood employees. At that time Jeff Mitchell reported to Dan Robusto, and it is undisputed that the employees at the Stevens Street plant knew that Robusto was Mitchell's boss.

The changes in the early retirement and normal retirement benefits were implemented at the Godfrey Street and Kentwood plants on January 1, 1997. Until the time of this change, the pension plans for all three plants had been the same.

On April 11, Ken Bieber, international representative for the UAW, sent Mitchell a letter which stated:

> I have been informed by Keeler Die Cast employees that you have told them that, as much as you want to, you can't change [improve] the pension formula for KDC employees as was done for employees of other Keeler plants. It's been reported that your reason for doing so is your concern for maintaining "laboratory conditions" during an employee union organizing campaign.
>
> This is to advise you that the UAW has no objection whatsoever with your increasing the pension formula or any other wage increase for Keeler Die Cast employees, while we await certification of the results of the employees' union representation election. The Union will not file unfair labor practice charges against the Company for granting any such increases nor would we consider you having destroyed "conditions" as a result of any such increases put into effect by Keeler Die Cast Company.

On May 15, 1997, the morning that the Respondent received the hearing officer's report recommending that the objections to the election be overruled and that the Union be certified, Jeff Mitchell conducted an employee meeting in which he described the UAW as a dark cloud on the horizon. After the meeting, Mitchell was approached by Tim Van Hill and a coworker. During the course of this conversation, Mitchell was asked if the Respondent was going to increase the pension benefits at the Stevens Street plant. Mitchell replied, "This morning I said that there's a possibility of a new election of the union, which isn't as big a possibility now as it was at 7 this morning, or [there is] the possibility of going into negotiations and we don't want to make any changes . . . . Either way it is dangerous for us, we could give a $10 an hour raise and then we would have a new election and the union would take exception, well, you bribed them with a $10 an hour raise two weeks before the letter." Mitchell then referred to the letter he had received from Ken Bieber, and said, "Ken Beiber's letter said he'd be glad for us to give a raise, glad for us to give retirement increases, but you know if we're going into negotiations those are things that ought to be talked about in negotiations." The Respondent has yet to negotiate.

In this regard, the Respondent told employees on July 30, in response to the question about upcoming changes in the Stevens Street plant retirement program: "Not what your [sic] looking for. Our hands are tied now. We can't change anything that could be viewed as a bribe, in view of a possible new election. If there is not a new election, then the retirement issue can be discussed in negotiations."

The Respondent's strategy from the beginning was to advise employees that not only would they not be guaranteed a better pension plan if they voted in the Union, but in the event they did vote for union representation, they would lose pension benefits that they would have otherwise received. Once the Union was voted in, the Respondent's strategy was to refuse to bargain and to place the onus on the Union by claiming that it was prevented from granting the pension increases at the Stevens Street plant because if a second election was directed by the Board, the Union could claim the pension increases were an improper bribe or if the Respondent was ordered to bargain by the Board, the employees would have to await the outcome of bargaining. However, as described above, on October 30, 1996, Jeff Mitchell had previously advised employees, "If the Union comes to KDC we would all start from scratch with no benefits and we would negotiate everything." He also made a point of telling employees at the *Coffee with Jeff* meetings prior to the election that the local plants had the same pension plan. Further, the timing of Jeff Mitchell's December 6 memo in which he advised the Stevens Street plant employees that, "as much as we might want to make changes now, there are rules governing the election period that affect our being able to do that. I can tell you that there are pension improvements currently being finalized at Godfrey and Kentwood and anticipate a decision will be announced there shortly" establishes that Respondent withheld the pension increases in an attempt to manipulate the results of the election. This conclusion is buttressed by the announcement to the employees at the other two plants several days prior to the election that the pension benefits would go into effect there on January 1 and by the appearance in the break room and on the bulletin boards in the Stevens Street plant 2 days before the election of the memorandum from Dan Robusto to the Kentwood (FKI Automotive) employees describing these pension improvements. If the Respondent truly wanted to avoid the appearance of trying to influence the elec-

[3] At this period of time Keeler Brass Company operated the Kentwood plant under the assumed name of FKI Automotive and Dan Robusto served as its president.

tion, there was no reason why it could not have waited until after the election to announce the pension improvements.

Thus, the evidence described above, clearly proves that the purpose of not granting the employees at the Stevens Street plant the pension increases that were implemented at the other two Keeler Brass plants was to influence the outcome of the election, to punish employees for their support of the Union, and to demonstrate to them that they could expect to receive lesser wages and benefits so long as the Union continued to represent them. This is a violation of Section 8(a)(1) and (3) of the Act. See, e.g., *Pennsylvania Gas & Water Co.,* 314 NLRB 791 (1994); and *Autozone, Inc.,* 315 NLRB 115, 131–133 (1994). Furthermore, the employees of all three plants of the Keeler Brass Company had for many years been covered by the same pension and were eligible for identical pension benefits. This employerwide pension was a condition of employment and a mandatory subject of bargaining. By withholding the pension improvements from the bargaining unit employees without giving the Union notice and the opportunity to bargain, the Respondent also violated Section 8(a)(1) and (5) of the Act. See, e.g., *Fieldcrest Cannon,* 318 NLRB 470, 471–472 (1995).

2. Failure to grant annual wage increases at the Stevens Street plant

From 1991 to October 1996 the employees at the Steven Street plant received an across-the-board annual wage increase averaging 2-1/2 percent. The only year during that period when no across-the-board wage increase was granted was 1992, but in 1991 the employees had been given a 5-percent across-the-board wage increase. With the exception of 1991, when the wage increase was issued in April, in all other years the wage increase was issued in October. Because a substantial percentage of the Stevens Street plant employees had many years of seniority and were at the top wage rate for their job classifications, the only raise they were eligible for was the annual across-the-board increase. However, in October 1997, the month following the Board's certification of the Union as the bargaining agent of the production and maintenance unit, the Respondent failed to grant the employees an across-the-board wage increase. This was the first annual wage increase they were eligible for following the election. Several times during 1997, Jeff Mitchell told employees that their wage increase was in the budget and indicated that it looked promising that they would receive it. Nonetheless, the Respondent failed to grant the wage increase even though the Respondent was exceeding profit goals. Yet the Respondent did budget and issue wage increases to its salaried employees for the 1997–1998 fiscal year, and wage increases were granted at the nonunion Godfrey Street and Kentwood plants during that period. When employee Jerry Farrell approached Jeff Mitchell that December and asked if the employees were going to receive the raise they had coming in October, Mitchell candidly replied that due to the union activity he could not give them a raise.

The Respondent denied the unit employees their across-the-board wage increase just as it had denied them their pension improvements in order to demonstrate to them that so long as the Union was their collective-bargaining representative they would receive lesser wages and benefits. This is a violation of Section 8(a)(1) and (3) of the Act. *Fieldcrest Cannon,* supra; *Pennsylvania Gas & Water Co.,* supra; and *Autozone, Inc.,* supra.

The Respondent offered no real defense to this conduct other than to suggest that business was down somewhat in August and September1997, the second quarter of their business year. However, this apparently was due in large part to the loss of the Honda job in August which had been anticipated for some time and, notwithstanding the loss of this work, the Respondent exceeded its planned profit for the first half of the 1997–1998 fiscal year (April through September) by $107,000. Moreover, the Respondent was less profitable the previous year and still awarded a 2-1/2-percent across-the-board wage increase to the Stevens Street employees in October 1996. Indeed, the Respondent lost a great deal of money during the first half of the 1996–1997 fiscal year and barely broke even for the entire 1996–1997 fiscal year. Despite the fact that he had told employees during 1997 that the wage increase was in the budget, Jeff Mitchell asserted unconvincingly at the hearing that no raise had been budgeted for the unit employees for the 1997–1998 fiscal year. He admitted, however, that a raise had been budgeted and issued for the salaried employees during that period. Furthermore, the budget process for the 1997–1998 fiscal year began in or about November 1996, after the Union had filed its representation petition and was finalized in January 1997, a month after the Union won the election. In any event, Mitchell conceded that even if such a wage increase was not budgeted it did not mean that such a wage increase could not be granted.

In summary,

> (a) given the evidence of antiunion animus described above, in particular Mitchell's statement that employees would not be granted their wage increases due to their union activity;
>
> (b) the fact that a 2-1/2-percent wage increase had been granted in 1993–1996;
>
> (c) that the salaried employees at the Stevens Street plant were given wage increases during the 1997–1998 fiscal year;
>
> (d) that the employees at the Godfrey Street and Kentwood plants were given a raise during this period;
>
> (e) that the Respondent met its budgeted profit at Stevens Street and failed to establish a credible business justification for not granting the wage increase,

It is beyond question that these employees were denied their wage increase in order to discourage them from further supporting the Union. The Respondent therefore violated Section 8(a)(1) and (3) of the Act. *Fieldcrest Cannon,* supra; *Pennsylvania Gas & Water Co.,* supra; and *Autozone, Inc.,* supra.

It is undisputed that the Respondent never gave the Union notice or opportunity to bargain about its decision not to issue an annual across-the-board increase at the Stevens Street plant. Inasmuch as this annual wage increase had been given each October from 1993 through 1996, it was an established condition of employment. By suspending the wage increase without giving the Union notice and opportunity to bargain, the Respondent violated Section 8(a)(1) and (5) of the Act. *Fieldcrest Cannon,* supra; *Chester County Hospital,* 320 NLRB 604, 621 (1995).

3. The failure to provide paid influenza immunizations at the Stevens Street plant

It is undisputed that from at least 1992 until 1997, the production and maintenance employees at the Stevens Street plant received employer paid influenza immunization shots each fall. The employees at the Godfrey Street and the Kentwood plants also received this same benefit. However, in the fall of 1997,

the Respondent stopped providing employees at the Stevens Street plant with this benefit. However, it continued providing flu shots to its employees at the other two area plants. The evidence of antiunion animus described earlier and the evidence of disparate treatment of the unionized employees establishes a prima facie case that this suspension of benefits was designed to discourage support for the Union and, accordingly, violated Section 8(a)(1) and (3) of the Act.

Furthermore, it is undisputed that the Respondent suspended this benefit without giving the Union notice or opportunity to bargain. This paid health benefit to employees is certainly a mandatory subject of bargaining and, therefore, its unilateral elimination was also a violation of Section 8(5) of the Act. *Casa San Miquel, Inc.,* 320 NLRB 535, 598 (1998).

4. Implementation of a new work rule

On May 20, 1997, less than a week after the hearing officer's report issued, the Respondent posted a new work rule. The work rule, which was issued and posted without giving the Union notice or opportunity to bargain stated, "If an employee is caught rummaging through the trash, this offense is a major infraction and is subject to immediate dismissal." The work rules of the Respondent, which are set forth in its employee handbook, did not prohibit employees from taking materials from the trash. Significantly, one of the objections filed by the Respondent to the election alleged that employees had taken memoranda from the trash of the Respondent which the Union had used in its campaign. The hearing officer, in his May 14 report, concluded that this was not objectionable conduct. On receiving the report, the Respondent then issued this new rule prohibiting employees from taking materials from the trash and making it a dischargeable offense.

The timing of the issuance of this rule and its subject matter evidences that it was issued in retaliation for the employees' support of the Union. The new rule issued 5 days after the May 15 meeting in which Jeff Mitchell referred to the UAW as a dark cloud on the horizon, and 6 days after the hearing officer's report noted above. The issuance of the rule was in violation of Section 8(a)(1) and (3) of the Act. See, e.g., *Garney Morris, Inc.,* 313 NLRB 101, 120 (1993); and *Sivalls, Inc.,* 307 NLRB 986, 991–992 (1992).

In any event, the work rule, which was clearly a mandatory subject of bargaining, was issued unilaterally without notice to the Union and without giving the Union opportunity to bargain and therefore, its implementation was in violation of Section 8(a)(1) and (5) of the Act. See, e.g., *Pepsi Cola Bottling Co.,* 315 NLRB 882, 895 (1994).

5. Unilateral changes in work schedules

On September 2, 1997, the Respondent issued a notice stating that effective September 8, employees in department 360/361 would revert to an 8-hour shift. Since about 1991, the employees in these Departments had worked 10-hour days, Monday through Thursday, and had Fridays off. When they worked Friday, it was paid as overtime. The September 8 memo changed this by returning the employees in these departments to five 8-hour days. According to the memo, the purpose of the schedule change was to meet customer requirements with a minimum of overtime. In fact, for the next several weeks there was little, if any, overtime in these departments. At the same time, the Respondent posted a memorandum for the employees in departments 330/331 and 350/351, which effectively changed their starting and quitting times. The Respondent admittedly made these changes without giving the Union notice or opportunity to bargain.

The changes in the work schedules in these departments and the resulting reduction in overtime hours was a mandatory subject of bargaining, and by making these changes unilaterally without giving the Union notice or opportunity to bargain, the Respondent violated Section 8(a)(1) and (5) of the Act. *Hoffman Security,* 315 NLRB 275, 281 (1994); *Blue Circle Cement Co.,* 319 NLRB 954 (1995); and *Millard Processing Services,* 310 NLRB 421, 424–425 (1993).

6. Unilateral changes in health and dental insurance

The Respondent admitted that on December 10, 1997, it changed the health benefit coverage and the dental coverage offered to employees, and these changes went into effect on January 1, 1998. It did so without giving the Union notice and opportunity to bargain. The changes were substantial in that employees were no longer given the option of joining one of several different health maintenance organizations, and instead were offered a preferred provider plan. The plan offered to employees had different medical benefit coverage, different copays, different prescription coverage, and different dental benefit coverage than had been offered for the previous year. It is well settled that medical and dental insurance coverage is a mandatory subject of bargaining and, as a result, these unilateral changes were in violation of Section 8(a)(1) and (5) of the Act. *Legal Aid Bureau,* 319 NLRB 159, 167 (1995).

7. Unilateral changes in vacation policy

Effective January 1, 1998, the Respondent changed it vacation policy reducing the number of weeks that employees were able to accrue from 5 to 4 weeks without giving the Union notice or opportunity to bargain. Vacation benefits are also a mandatory subject of bargaining and the unilateral reduction of these benefits violated Section 8(a)(1) and (5) of the Act. *Legal Aid Bureau,* supra at 168; and *Casa San Miquel,* supra at 598.

8. The refusal to provide information

In anticipation of future bargaining with the Respondent, the Union, on September 18, 1997, requested by letter the following information:

1. Names and addresses of employees.
2. Dates of hire, wage rates, hours of work.
3. Wage and salary plans applicable to bargaining unit employees during the past three years.
4. Date and amount of wage increase for each employee during the past three years.
5. Job descriptions, job classifications.
6. All information covering the employee vacation plan.
7. All information covering holiday pay.
8. All information covering pension plans.
9. All information covering employee insurance programs, including the name of the insurance carrier, the holder of the master policy, the agent of record, the total cost per employee for a single person, couple or family. Also, the total contribution (both company and employee) for all categories.
10. All information on any other fringe benefits, including but not limited to, bonus plan or any other employee benefits.
11. Disciplinary policies and attendance policies.

The Respondent admittedly did not provide the requested information until February 11, 1998, and has never provided the cost information with respect to the health insurance. The Respondent's 4-1/2-month delay in providing the Union with this information concerning the terms and conditions of employment of unit employees, which is clearly necessary and relevant to collective bargaining, and its failure to provide the cost information regarding health insurance, which is also relevant, was in violation of Section 8(a)(1) and (5) of the Act. *Martin Marrietta Energy Systems,* 316 NLRB 868 (1995); and *Gloversville Embossing Systems,* 314 NLRB 1258, 1265 (1994).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Since September 3, 1997, the Union has been the certified exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including all leadmen, quality auditors and material handling clerks employed by the Employer at its facility located at 236 Stevens Street, SW, Grand Rapids, Michigan; but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees, guards and supervisors as defined in the Act.

4. The Respondent has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act by:

(a) Since on or about January 1, 1997, withholding from unit employees the increase in pension benefits which were given to its non-union employees at its two other area plants.

(b) Since on or about October 1997, withholding an annual across-the-board wage increase to unit employees.

(c) Since about November 1997, unilaterally discontinuing its practice of providing free influenza immunizations to unit employees.

(d) Since about May 20, 1997, promulgating a new work rule subjecting unit employees to immediate dismissal for "rummaging through the trash."

5. The Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act by its conduct set out in paragraph 4 above, and by:

(a) Since about September 2, 1997, unilaterally changing the work schedules and availability of overtime work to unit employees in departments 330/331, 350/351, and 360/361.

(b) Since about December 10, 1997, unilaterally implementing changes in the health and dental insurance coverage of its unit employees.

(c) Since about December 10, 1997, unilaterally reducing the maximum amount of vacation time available for unit employees from 5 weeks to 4 weeks.

(d) By delaying some 4-1/2 months in providing the Union with information necessary and relevant to its role as exclusive collective bargaining representative for the unit employees.

(e) By since September 18, 1997, failing and refusing to supply the Union necessary and relevant information relating to the cost of health and dental insurance.

6. The unfair labor practices committed by the Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent should be ordered to make whole any unit employees who may have been denied the increased pension benefit since January 1, 1997, overtime work since September 2, 1997, wage rate increases since October 1997, flu vaccinations since about November 1997, and health and dental insurance benefits and vacation benefits since about December 10, 1997, in accordance with the Board's holding in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest computed under the Board's formula as set out in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). The Respondent should further be ordered to rescind its work rule unilaterally promulgated on May 20, 1997 making it a dischargeable offense for any employee caught "rummaging through the trash." The Respondent should be ordered to return to the status quo ante as it existed prior to September 2, 1997, regarding the weekly work schedules and overtime availability for unit employees, and make available to unit employees the status quo ante as it existed prior to December 10, 1997, regarding health and dental insurance coverage and vacation benefits.

The Respondent should be order to, on request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Keeler Brass Company, d/b/a Keeler Die Cast, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withholding from unit employees the increase in pension benefits which were given to its nonunion employees at its two other area plants on or about January 1, 1997.

(b) Withholding an annual across-the-board wage increase to unit employees since October 1997.

(c) Unilaterally discontinuing its practice of providing free influenza immunizations to unit employees.

(d) Promulgating new work rules subjecting unit employees to discharge without giving the Union notice and the opportunity to bargain over proposed changes in existing work rules.

(e) Unilaterally changing the work schedules and availability of overtime work to unit employees.

(f) Unilaterally implementing changes in the health and dental insurance coverage of its unit employees.

(g) Unilaterally reducing the maximum amount of vacation time available for unit employees.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(h) Delaying in providing the Union with information necessary and relevant to its role as exclusive collective-bargaining representative for the unit employees.

(i) Failing and refusing to supply the Union necessary and relevant information relating to the cost of health and dental insurance.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole any unit employees who may have been denied the increased pension benefit since January 1, 1997, overtime work since September 2, 1997, wage rate increases since October 1997, flu vaccinations since about November 1997, and health and dental insurance benefits and vacation benefits since about December 10, 1997, in the manner set forth in the remedy section of this decision.

(b) Rescind its work rule unilaterally promulgated on May 20, 1997 making it a dischargeable offense for any employee caught "rummaging through the trash."

(c) Return to the status quo ante as it existed prior to September 2, 1997, regarding the weekly work schedules and overtime availability for unit employees.

(d) Make available to unit employees the status quo ante as it existed prior to December 10, 1997, regarding health and dental insurance coverage and vacation benefits.

(e) On request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the unit.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Stevens Street facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 23, 1997.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a Judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT withhold from unit employees the increase in pension benefits, which were given to our nonunion employees at our two other area plants on or about January 1, 1997.

WE WILL NOT continue to withhold an annual across-the-board wage increase to unit employees due October 1997.

WE WILL NOT unilaterally discontinue our practice of providing free influenza immunizations to unit employees.

WE WILL NOT promulgate new work rules subjecting unit employees to discharge without giving the Union notice and the opportunity to bargain over proposed changes in existing work rules.

WE WILL NOT unilaterally change the work schedules and availability of overtime work to unit employees.

WE WILL NOT unilaterally implement changes in the health and dental insurance coverage of our unit employees.

WE WILL NOT Unilaterally reduce the maximum amount of vacation time available for unit employees.

WE WILL NOT delay in providing the Union with information necessary and relevant to its role as exclusive collective-bargaining representative for the unit employees.

WE WILL NOT fail and refuse to supply the Union necessary and relevant information relating to the cost of health and dental insurance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL make whole any unit employees who may have been denied the increased pension benefit since January 1, 1997, overtime work since September 2, 1997, wage rate increases since October 1997, flu vaccinations since about November 1997, and health and dental insurance benefits and vacation benefits since about December 10, 1997, with interest.

WE WILL rescind our work rule unilaterally promulgated on May 20, 1997 making it a dischargeable offense for any employee caught "rummaging through the trash."

WE WILL return to the status quo ante as it existed prior to September 2, 1997, regarding the weekly work schedules and overtime availability for unit employees.

WE WILL make available to unit employees the status quo ante as it existed prior to December 10, 1997, regarding health and dental insurance coverage and vacation benefits.

WE WILL, on request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the unit described below:

All full-time and regular part-time production and maintenance employees, including all leadmen, quality auditors and material handling clerks employed by us at our facility located at 236 Stevens Street, SW, Grand Rapids, Michigan; but excluding all office clerical employees, quality analysts, technical employees, professional employees, casual employees and supervisors as defined in the Act.

KEELER BRASS COMPANY, D/B/A KEELER DIE CAST